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SENATE BILL 84

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

William E. Sharer

AN ACT

RELATING TO DWI; AMENDING THE IMPLIED CONSENT ACT TO ELIMINATE ADMINISTRATIVE HEARINGS AFTER REVOCATION OF A PERSON'S DRIVER'S LICENSE FOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-5-35 NMSA 1978 (being Laws 1978, Chapter 35, Section 257, as amended by Laws 2001, Chapter 47, Section 1 and also by Laws 2001, Chapter 242, Section 1) is amended to read:

"66-5-35. LIMITED DRIVING PRIVILEGE UPON SUSPENSION OR REVOCATION [~~HEARING~~---REVIEW]. --

A. Upon suspension or revocation of a person's driver's license following conviction or adjudication as a delinquent under any law, ordinance or rule relating to motor

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1 vehicles, a person may apply to the department for a license or
2 permit to drive, limited to use allowing him to engage in
3 gainful employment, to attend school or to attend a court-
4 ordered treatment program, except that the person shall not be
5 eligible to apply:

6 (1) for a limited commercial driver's license;

7 (2) for a limited license when the person's
8 driver's license was revoked pursuant to the provisions of the
9 Implied Consent Act, except as provided in Subsection B of this
10 section;

11 (3) for a limited license when the person's
12 license was revoked pursuant to an offense for which the person
13 is a subsequent offender as defined in the Motor Vehicle Code,
14 except that a person who is convicted a second or third time
15 for driving under the influence of intoxicating liquor or drugs
16 may apply for and shall receive a limited license if he
17 complies with the requirements set forth in Subsections C and D
18 of this section; or

19 (4) for a limited license when the person's
20 driver's license was revoked pursuant to a conviction for
21 committing homicide by vehicle or great bodily injury by
22 vehicle, as provided in Section 66-8-101 NMSA 1978.

23 B. A person whose driver's license is revoked for
24 the first time pursuant to the provisions of Paragraph (1) or
25 (2) of Subsection C of Section 66-8-111 NMSA 1978 or for the

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1 second or third time pursuant to the provisions of Paragraph
2 (3) of Subsection C of Section 66-8-111 NMSA 1978 may apply for
3 and shall receive a limited license or permit thirty days after
4 suspension or revocation of his license if the person pays
5 every fee, meets the criteria for limited driving privileges
6 established in rules by the department and provides the
7 department with documentation of the following:

8 (1) that the person is enrolled in a DWI
9 school approved by the traffic safety bureau of the state
10 highway and transportation department and an approved alcohol
11 screening program;

12 (2) proof of financial responsibility pursuant
13 to the provisions of the Mandatory Financial Responsibility
14 Act; and

15 (3) if the person's driver's license is
16 revoked pursuant to the provisions of Paragraph (3) of
17 Subsection C of Section 66-8-111 NMSA 1978, proof that each
18 motor vehicle to be operated by the person, if he receives a
19 limited license, shall be equipped with an ignition interlock
20 device installed and operated pursuant to rules adopted by the
21 traffic safety bureau and:

22 (a) proof of gainful employment or
23 gainful self-employment and that the person needs a limited
24 license to travel to and from his place of employment;

25 (b) proof that the person is enrolled in

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1 school and needs a limited license to travel to and from
2 school; or

3 (c) proof that the person is enrolled in
4 a court-ordered treatment program and needs a limited license
5 to travel to and from the treatment program.

6 C. A person who is convicted a second or third time
7 for driving under the influence of intoxicating liquor or
8 drugs may apply for and shall receive a limited license thirty
9 days after suspension or revocation of his license if the
10 person pays every fee, meets the criteria for limited driving
11 privileges established in rule by the department and provides
12 the department with documented proof:

13 (1) of enrollment in a DWI school approved by
14 the traffic safety bureau and an approved alcohol screening
15 program;

16 (2) of financial responsibility pursuant to
17 the provisions of the Mandatory Financial Responsibility Act;
18 and

19 (3) of gainful employment or gainful self-
20 employment and that the person needs a limited license to
21 travel to and from his place of employment; or

22 (4) of enrollment in school and that the
23 person needs a limited license to travel to and from school; or

24 (5) of enrollment in a court-ordered treatment
25 program and that the person needs a limited license to travel

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1 to and from the treatment program.

2 D. In addition to the requirements set forth in
3 Subsection C of this section, a person who is convicted a
4 second or third time for driving under the influence of
5 intoxicating liquor or drugs shall provide the department with
6 his judgment and sentence. The judgment and sentence shall
7 attest that the person will be on probation for the entire
8 period that a limited license will be in effect and that, as a
9 condition of probation, the person shall provide proof that
10 each motor vehicle to be operated by the person is equipped
11 with an ignition interlock device installed and operated
12 pursuant to rules adopted by the traffic safety bureau. The
13 ignition interlock device shall be installed on the appropriate
14 motor vehicle at the person's expense.

15 E. Upon receipt of a fully completed application
16 that complies with statutes and rules for a limited license and
17 payment of the fee specified in this subsection, the department
18 shall issue a limited license or permit to the applicant
19 showing the limitations specified in the approved application.
20 For each limited license or permit to drive, the applicant
21 shall pay to the department a fee of forty-five dollars
22 (\$45.00), which shall be transferred to the state highway and
23 transportation department. All money collected under this
24 subsection shall be used for DWI prevention and education
25 programs for elementary and secondary school students. The

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1 state highway and transportation department shall coordinate
2 with the department of health to ensure that there is no
3 program duplication. The limited license or permit to drive
4 may be suspended as provided in Section 66-5-30 NMSA 1978.

5 ~~[F.—The department, within twenty days of denial of~~
6 ~~an application for a limited driver's license or permit~~
7 ~~pursuant to this section, shall afford the applicant a hearing~~
8 ~~in the county in which the applicant resides, unless the~~
9 ~~department and the licensee agree that the hearing may be held~~
10 ~~in some other county.—The department may extend the twenty-day~~
11 ~~period, provided that the extension is in writing and made no~~
12 ~~later than fifteen days after receipt of an application.—Upon~~
13 ~~hearing, the hearing officer designated by the department may~~
14 ~~administer oaths and may issue subpoenas for the attendance of~~
15 ~~witnesses and the production of relevant books and papers.—The~~
16 ~~hearing officer shall make specific findings as to whether the~~
17 ~~applicant has shown proof of financial responsibility for the~~
18 ~~future and enrollment in an approved DWI school and an approved~~
19 ~~alcohol screening program and meets established uniform~~
20 ~~criteria for limited driving privileges adopted by rule of the~~
21 ~~department.—The hearing officer shall enter an order either~~
22 ~~approving or denying the applicant's request for a limited~~
23 ~~license or permit to drive.—If any of the specific findings~~
24 ~~set forth in this subsection are not found by the hearing~~
25 ~~officer, the applicant's request for a limited license or~~

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1 ~~permit shall not be approved.~~

2 G. ~~A person adversely affected by an order of the~~
3 ~~hearing officer may seek review within thirty days in the~~
4 ~~district court in the county in which he resides. On review,~~
5 ~~it is for the court to determine only whether the applicant met~~
6 ~~the requirements in this section for issuance of a limited~~
7 ~~license or permit to drive.]"~~

8 Section 2. Section 66-8-111.1 NMSA 1978 (being Laws 1984,
9 Chapter 72, Section 7, as amended) is amended to read:

10 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
11 DEPARTMENT-- WRITTEN NOTICE OF REVOCATION [~~AND RIGHT TO~~
12 ~~HEARING~~].-- On behalf of the department, a law enforcement
13 officer requesting a chemical test or directing the
14 administration of a chemical test pursuant to Section 66-8-107
15 NMSA 1978 shall serve immediate written notice of revocation
16 [~~and of right to a hearing~~] on a person who refuses to permit
17 chemical testing or on a person who submits to a chemical test
18 the results of which indicate an alcohol concentration of eight
19 one hundredths or more in the person's blood or breath if the
20 person is twenty-one years of age or older or an alcohol
21 concentration of two one hundredths or more in the person's
22 blood or breath if the person is less than twenty-one years of
23 age. Upon serving notice of revocation, the law enforcement
24 officer shall take the license or permit of the driver, if any,
25 and issue a temporary license valid for twenty days [~~or, if the~~

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1 ~~driver requests a hearing pursuant to Section 66-8-112 NMSA~~
2 ~~1978, valid until the date the department issues the order~~
3 ~~following that hearing; provided that no temporary license~~
4 ~~shall be issued to a driver without a valid license or permit].~~

5 The law enforcement officer shall send the person's driver's
6 license to the department along with the signed statement
7 required pursuant to Section 66-8-111 NMSA 1978. "

8 Section 3. Section 66-8-112 NMSA 1978 (being Laws 1978,
9 Chapter 35, Section 520, as amended) is amended to read:

10 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE--
11 NOTICE--EFFECTIVE DATE [~~HEARING--HEARING COSTS--REVIEW~~]. -- [A.]

12 The effective date of revocation pursuant to Section 66-8-111
13 NMSA 1978 is twenty days after notice of revocation [~~or, if the~~
14 ~~person whose license or privilege to drive is being revoked or~~
15 ~~denied requests a hearing pursuant to this section, the date~~
16 ~~that the department issues the order following that hearing].~~

17 The date of notice of revocation is:

18 [(1)] A. the date the law enforcement officer
19 serves written notice of revocation [~~and of right to a hearing~~]
20 pursuant to Section 66-8-111.1 NMSA 1978; or

21 [(2)] B. in the event the results of a chemical
22 test cannot be obtained immediately, the date notice of
23 revocation is served by mail by the department. This notice of
24 revocation [~~and of right to a hearing~~] shall be sent by
25 certified mail and shall be deemed to have been served on the

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1 date borne by the return receipt showing delivery, refusal of
2 the addressee to accept delivery or attempted delivery of the
3 notice at the address obtained by the arresting law enforcement
4 officer or on file with the department.

5 ~~[B. Within ten days after receipt of notice of~~
6 ~~revocation pursuant to Subsection A of this section, a person~~
7 ~~whose license or privilege to drive is revoked or denied or the~~
8 ~~person's agent may request a hearing. The hearing request~~
9 ~~shall be made in writing and shall be accompanied by a payment~~
10 ~~of twenty-five dollars (\$25.00) or a sworn statement of~~
11 ~~indigency on a form provided by the department. A standard for~~
12 ~~indigency shall be established pursuant to regulations adopted~~
13 ~~by the department. Failure to request a hearing within ten~~
14 ~~days shall result in forfeiture of the person's right to a~~
15 ~~hearing. Any person less than eighteen years of age who fails~~
16 ~~to request a hearing within ten days shall have notice of~~
17 ~~revocation sent to his parent, guardian or custodian by the~~
18 ~~department. A date for the hearing shall be set by the~~
19 ~~department, if practical, within thirty days after receipt of~~
20 ~~notice of revocation. The hearing shall be held in the county~~
21 ~~in which the offense for which the person was arrested took~~
22 ~~place.~~

23 ~~C. The department may postpone or continue any~~
24 ~~hearing on its own motion or upon application from the person~~
25 ~~and for good cause shown for a period not to exceed ninety days~~

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1 ~~from the date of notice of revocation and provided that the~~
2 ~~department extends the validity of the temporary license for~~
3 ~~the period of the postponement or continuation.~~

4 ~~D. At the hearing, the department or its agent may~~
5 ~~administer oaths and may issue subpoenas for the attendance of~~
6 ~~witnesses and the production of relevant books and papers.~~

7 ~~E. The hearing shall be limited to the issues:~~

8 ~~(1) whether the law enforcement officer had~~
9 ~~reasonable grounds to believe that the person had been driving~~
10 ~~a motor vehicle within this state while under the influence of~~
11 ~~intoxicating liquor;~~

12 ~~(2) whether the person was arrested;~~

13 ~~(3) whether this hearing is held no later than~~
14 ~~ninety days after notice of revocation; and either~~

15 ~~(4)~~

16 ~~(a) whether the person refused to submit~~
17 ~~to a test upon request of the law enforcement officer; and~~

18 ~~(b) whether the law enforcement officer~~
19 ~~advised that the failure to submit to a test could result in~~
20 ~~revocation of the person's privilege to drive; or~~

21 ~~(5)~~

22 ~~(a) whether the chemical test was~~
23 ~~administered pursuant to the provisions of the Implied Consent~~
24 ~~Act; and~~

25 ~~(b) the test results indicated an~~

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1 ~~alcohol concentration of eight one-hundredths or more in the~~
2 ~~person's blood or breath if the person is twenty-one years of~~
3 ~~age or older or an alcohol concentration of two one-hundredths~~
4 ~~or more in the person's blood or breath if the person is less~~
5 ~~than twenty-one years of age.~~

6 F. ~~The department shall enter an order sustaining~~
7 ~~the revocation or denial of the person's license or privilege~~
8 ~~to drive if the department finds that:~~

9 (1) ~~the law enforcement officer had reasonable~~
10 ~~grounds to believe the driver was driving a motor vehicle while~~
11 ~~under the influence of intoxicating liquor or drug;~~

12 (2) ~~the person was arrested;~~

13 (3) ~~this hearing is held no later than ninety~~
14 ~~days after notice of revocation; and~~

15 (4) ~~the person either refused to submit to the~~
16 ~~test upon request of the law enforcement officer after the law~~
17 ~~enforcement officer advised him that his failure to submit to~~
18 ~~the test could result in the revocation of his privilege to~~
19 ~~drive or that a chemical test was administered pursuant to the~~
20 ~~provisions of the Implied Consent Act and the test results~~
21 ~~indicated an alcohol concentration of eight one-hundredths or~~
22 ~~more if the person is twenty-one years of age or older or an~~
23 ~~alcohol concentration of two one-hundredths or more if the~~
24 ~~person is less than twenty-one years of age.~~

25 ~~If one or more of the elements set forth in Paragraphs (1)~~

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1 through (4) of this subsection are not found by the department,
2 the person's license shall not be revoked.

3 G. A person adversely affected by an order of the
4 department may seek review within thirty days in the district
5 court in the county in which the offense for which the person
6 was arrested took place. The district court, upon thirty days'
7 written notice to the department, shall hear the case. On
8 review, it is for the court to determine only whether
9 reasonable grounds exist for revocation or denial of the
10 person's license or privilege to drive based on the record of
11 the administrative proceeding.

12 H. Any person less than eighteen years of age shall
13 have results of his hearing forwarded by the department to his
14 parent, guardian or custodian.] "

15 Section 4. EFFECTIVE DATE. --The effective date of the
16 provisions of this act is July 1, 2003.